

REFERENCE TITLE: judges; merit selection; population

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HCR 2034

Introduced by
Representative Rios P, Senators Blendu, Miranda, Verschoor:
Representatives Biggs, McGuire, Senators Garcia, Hale, Rios

A CONCURRENT RESOLUTION

PROPOSING AMENDMENTS TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 12, 28, 30, 35, 37, 38, 40 AND 41, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona, the
2 Senate concurring:

3 1. Article VI, sections 12, 28, 30, 35, 37, 38, 40 and 41,
4 Constitution of Arizona, are proposed to be amended as follows if approved by
5 the voters and on proclamation of the Governor:

6 12. Superior court: term of office

7 Section 12. A. Judges of the superior court in counties
8 having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand
9 persons according to the most recent United States census shall
10 be elected by the qualified electors of their counties at the
11 general election. They shall hold office for a regular term of
12 four years except as provided by this section from and after the
13 first Monday in January next succeeding their election, and
14 until their successors are elected and qualify. The names of
15 all candidates for judge of the superior court in such counties
16 shall be placed on the regular ballot without partisan or other
17 designation except the division and title of the office.

18 B. The governor shall fill any vacancy in such counties
19 by appointing a person to serve until the election and
20 qualification of a successor. At the next succeeding general
21 election following the appointment of a person to fill a
22 vacancy, a judge shall be elected to serve for the remainder of
23 the unexpired term.

24 Judges of the superior court in counties having a
25 population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more
26 according to the most recent United States census shall hold
27 office for a regular term of four years except as provided by
28 this article.

29 28. Justices and judges: dual office holding:
30 political activity: practice of law

31 Section 28. Justices and judges of courts of record shall
32 not be eligible for any other public office or for any other
33 public employment during their term of office, except that they
34 may assume another judicial office, and upon qualifying
35 therefor, the office formerly held shall become vacant. No
36 justice or judge of any court of record shall practice law
37 during his continuance in office, nor shall he hold any office
38 in a political party or actively take part in any political
39 campaign other than his own for his reelection or retention in
40 office. Any justice or judge who files nomination papers for an
41 elective office, other than for judge of the superior court or a
42 court of record inferior to the superior court in a county
43 having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand
44 persons according to the most recent United States census,
45 forfeits his judicial office.

30. Courts of record

Section 30. A. The supreme court, the court of appeals and the superior court shall be courts of record. Other courts of record may be established by law, but justice courts shall not be courts of record.

B. All justices and judges of courts of record, except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand persons according to the most recent United States census, shall be appointed in the manner provided in section 37 of this article.

35. Continuance in office; continued existence of offices; application of prior statute and rules

Section 35. A. All justices, judges, justices of the peace and officers of any court who are holding office as such by election or appointment at the time of the adoption of this section ~~OR ANY AMENDMENT TO THIS SECTION~~ shall serve or continue in office for the respective terms for which they are so elected or for their respective unexpired terms, and until their successors are elected or appointed and qualify or they are retained in office pursuant to section 38 of this article; ~~provided, however,~~ EXCEPT that any justice or judge elected at the general election at which this section is adopted shall serve for the term for which he is so elected. The continued existence of any office heretofore legally established or held shall not be abolished or repealed by the adoption of this article. The statutes and rules relating to the authority, jurisdiction, practice and procedure of courts, judicial officers and offices in force at the time of the adoption of this article and not inconsistent herewith, shall, so far as applicable, apply to and govern such courts, judicial officers and offices until amended or repealed.

B. All judges of the superior court holding office by appointment or retention in counties with a population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more according to the most recent United States census at the time of the adoption of this amendment ~~OR ANY SUBSEQUENT AMENDMENT~~ to this section shall serve or continue in office for the respective terms for which they were appointed. Upon an incumbent vacating the office of judge of the superior court, whether by failing to file a declaration for retention, by rejection by the qualified electors of the county or resignation, the appointment shall be pursuant to section 37 of this article.

1 37. Judicial vacancies and appointments: initial
2 terms: residence: age

3 Section 37. A. Within sixty days from the occurrence of
4 a vacancy in the office of a justice or judge of any court of
5 record, except for vacancies occurring in the office of a judge
6 of the superior court or a judge of a court of record inferior
7 to the superior court, the commission on appellate court
8 appointments, if the vacancy is in the supreme court or an
9 intermediate appellate court of record, shall submit to the
10 governor the names of not less than three persons nominated by
11 it to fill such vacancy, no more than two of whom shall be
12 members of the same political party unless there are more than
13 four such nominees, in which event not more than sixty ~~percentum~~
14 ~~PER CENT~~ of such nominees shall be members of the same political
15 party.

16 B. Within sixty days from the occurrence of a vacancy in
17 the office of a judge of the superior court or a judge of a
18 court of record inferior to the superior court except for
19 vacancies occurring in the office of a judge of the superior
20 court or a judge of a court of record inferior to the superior
21 court in a county having a population of less than ~~two~~ SIX
22 hundred ~~fifty~~ thousand persons according to the most recent
23 United States census, the commission on trial court appointments
24 for the county in which the vacancy occurs shall submit to the
25 governor the names of not less than three persons nominated by
26 it to fill such vacancy, no more than two of whom shall be
27 members of the same political party unless there are more than
28 four such nominees, in which event no more than sixty per ~~centum~~
29 ~~CENT~~ of such nominees shall be members of the same political
30 party. A nominee shall be under sixty-five years of age at the
31 time ~~his~~ THE NOMINEE'S name is submitted to the governor.
32 Judges of the superior court shall be subject to retention or
33 rejection by a vote of the qualified electors of the county from
34 which they were appointed at the general election in the manner
35 provided by section 38 of this article.

36 C. A vacancy in the office of a justice or a judge of
37 such courts of record shall be filled by appointment by the
38 governor without regard to political affiliation from one of the
39 nominees whose names ~~shall be~~ ARE submitted to ~~him as~~
40 ~~hereinabove provided~~ THE GOVERNOR PURSUANT TO SUBSECTION A OR B.
41 In making the appointment, the governor shall consider the
42 diversity of the state's population for an appellate court
43 appointment and the diversity of the county's population for a
44 trial court appointment, however, the primary consideration
45 shall be merit. If the governor does not appoint one of such

1 nominees to fill such vacancy within sixty days after their
 2 names are submitted to the governor by such commission, the
 3 chief justice of the supreme court forthwith shall appoint on
 4 the basis of merit alone without regard to political affiliation
 5 one of such nominees to fill such vacancy. If such commission
 6 does not, within sixty days after such vacancy occurs, submit
 7 the names of nominees ~~as hereinabove provided~~ PURSUANT TO
 8 SUBSECTION A OR B, the governor shall have the power to appoint
 9 any qualified person to fill such vacancy at any time thereafter
 10 prior to the time the names of the nominees to fill such vacancy
 11 are submitted to the governor ~~as hereinabove provided~~ PURSUANT
 12 TO SUBSECTION A OR B. Each justice or judge so appointed shall
 13 initially hold office for a term ending sixty days following the
 14 next regular general election after the expiration of a term of
 15 two years in office. Thereafter, the terms of justices or
 16 judges of the supreme court and the superior court shall be as
 17 provided by this article.

18 D. A person appointed to fill a vacancy on an
 19 intermediate appellate court or another court of record now
 20 existing or hereafter established by law shall have been a
 21 resident of the counties or county in which that vacancy exists
 22 for at least one year ~~prior to his~~ BEFORE THE PERSON'S
 23 appointment, in addition to possessing the other required
 24 qualifications. A nominee shall be under sixty-five years of
 25 age at the time ~~his~~ THE NOMINEE'S name is submitted to the
 26 governor.

27 38. Declaration of candidacy; form of judicial
 28 ballot. rejection and retention; failure to
 29 file declaration

30 Section 38. A. A justice or judge of the supreme court or
 31 an intermediate appellate court shall file in the office of the
 32 secretary of state, and a judge of the superior court or other
 33 court of record including such justices or judges who are
 34 holding office as such by election or appointment at the time of
 35 the adoption of this section OR ANY AMENDMENT TO THIS SECTION,
 36 except for judges of the superior court and other courts of
 37 record inferior to the superior court in counties having a
 38 population of less than ~~two~~ SIX hundred ~~fifty~~ thousand persons,
 39 according to the United States census, shall file in the office
 40 of the clerk of the board of supervisors of the county in which
 41 he regularly sits and resides, not less than sixty nor more than
 42 ninety days prior to the regular general election next preceding
 43 the expiration of his term of office, a declaration of his
 44 desire to be retained in office, and the secretary of state
 45 shall certify to the several boards of supervisors the

1 appropriate names of the candidate or candidates appearing on
2 such declarations filed in his office.

3 B. The name of any justice or judge whose declaration is
4 filed as provided in this section shall be placed on the
5 appropriate official ballot at the next regular general election
6 under a nonpartisan designation and in substantially the
7 following form:

8 Shall _____, (Name of justice or judge) of the
9 _____ court be retained in office? Yes ___ No ___ (Mark X
10 after one).

11 C. If a majority of those voting on the question votes
12 "No," ~~then~~, upon the expiration of the term for which such
13 justice or judge was serving, a vacancy shall exist, which shall
14 be filled as provided by this article. If a majority of those
15 voting on the question votes "Yes," such justice or judge shall
16 remain in office for another term, subject to removal as
17 provided by this constitution.

18 D. The votes shall be counted and canvassed and the
19 result declared as in the case of state and county elections,
20 whereupon a certificate of retention or rejection of the
21 incumbent justice or judge shall be delivered to him by the
22 secretary of state or the clerk of the board of supervisors, as
23 the case may be.

24 E. If a justice or judge fails to file a declaration of
25 his desire to be retained in office, as required by this
26 section, ~~then~~ his office shall become vacant upon expiration of
27 the term for which such justice or judge was serving.

28 40. Option for counties with less than six hundred
29 thousand persons

30 Section 40. Notwithstanding any provision of this article
31 to the contrary, any county having a population of less than ~~two~~
32 ~~SIX~~ hundred ~~fifty~~ thousand persons, ~~—~~ according to the most
33 recent United States census, ~~—~~ may choose to select its judges of
34 the superior court or of courts of record inferior to the
35 superior court as if it had a population of ~~two~~ ~~SIX~~ hundred
36 ~~fifty~~ thousand or more persons. Such choice shall be determined
37 by vote of the qualified electors of such county voting on the
38 question at an election called for such purpose by resolution of
39 the board of supervisors of such county. If such qualified
40 electors approve, the provisions of sections 12, 28, 30, 35,
41 ~~through~~ 37, 38, 39, 41 and 42 shall apply as if such county had
42 a population of ~~two~~ ~~SIX~~ hundred ~~fifty~~ thousand persons or more.

1 41. Superior court divisions: commission on trial
2 court appointments: membership: terms

3 A. Except as otherwise provided, judges of the superior
4 court in counties having a population of ~~two~~ SIX hundred ~~fifty~~
5 thousand persons or more according to the most recent United
6 States census shall hold office for a regular term of four
7 years.

8 B. There shall be a nonpartisan commission on trial court
9 appointments for each county having a population of ~~two~~ SIX
10 hundred ~~fifty~~ thousand persons or more according to the most
11 recent United States census which shall be composed of the
12 following members:

13 1. The chief justice of the supreme court, who shall be
14 the chairman of the commission. In the event of the absence or
15 incapacity of the chairman the supreme court shall appoint a
16 justice thereof to serve in ~~his~~ THE JUSTICE'S place and stead.

17 2. Five attorney members, none of whom shall reside in
18 the same supervisorial district and not more than three of whom
19 shall be members of the same political party, who are nominated
20 by the board of governors of the state bar of Arizona and who
21 are appointed by the governor subject to confirmation by the
22 senate in the manner prescribed by law.

23 3. Ten nonattorney members, no more than two of whom
24 shall reside in the same supervisorial district.

25 C. At least ninety days prior to a term expiring or
26 within twenty-one days of a vacancy occurring for a nonattorney
27 member on the commission for trial court appointments, the
28 member of the board of supervisors from the district in which
29 the vacancy has occurred shall appoint a nominating committee of
30 seven members who reside in the district, not more than four of
31 whom may be from the same political party. The make-up of the
32 committee ~~shall~~, to the extent feasible, SHALL reflect the
33 diversity of the population of the district. Members shall not
34 be attorneys and shall not hold any governmental office,
35 elective or appointive, for profit. The committee shall provide
36 public notice that a vacancy exists and shall solicit, review
37 and forward to the governor all applications along with the
38 committee's recommendations for appointment. The governor shall
39 appoint two persons from each supervisorial district who shall
40 not be of the same political party, subject to confirmation by
41 the senate in the manner prescribed by law.

42 D. In making or confirming appointments to trial court
43 commissions, the governor, the senate and the state bar shall
44 endeavor to see that the commission reflects the diversity of
45 the county's population.

E. Members of the commission shall serve staggered four year terms, except that initial appointments for the five additional nonattorney members and the two additional attorney members of the commission shall be designated by the governor as follows:

1. One appointment for a nonattorney member shall be for a one-year term.

2. Two appointments for nonattorney members shall be for a two-year term.

3. Two appointments for nonattorney members shall be for a three-year term.

4. One appointment for an attorney member shall be for a one-year term.

5. One appointment for an attorney member shall be for a two-year term.

F. Vacancies shall be filled for the unexpired terms in the same manner as the original appointments.

G. Attorney members of the commission shall have resided in this state and shall have been admitted to practice in this state by the supreme court for at least five years and shall have resided in the supervisorial district from which they are appointed for at least one year. Nonattorney members shall have resided in this state for at least five years, shall have resided in the supervisorial district for at least one year before being nominated and shall not be judges, retired judges nor admitted to practice before the supreme court. None of the attorney or nonattorney members of the commission shall hold any governmental office, elective or appointive, for profit and no attorney member is eligible for appointment to any judicial office of this state until one year after membership in the commission terminates.

H. No person other than the chief justice shall serve at the same time as a member of more than one judicial appointment commission.

I. The commission shall submit the names of not less than three individuals for nomination for the office of ~~the~~ superior court judge pursuant to section 37 of this article.

J. Prior to making recommendations to the governor, the commission shall conduct investigations, hold public hearings and take public testimony. An executive session as prescribed by rule may be held upon a two-thirds vote of the members of the commission in a public hearing. Final decisions as to recommendations shall be made without regard to political affiliation in an impartial and objective manner. The commission shall consider the diversity of the county's

1 population and the geographical distribution of the residences
2 of the judges throughout the county, however the primary
3 consideration shall be merit. Voting shall be in a public
4 hearing. The expenses of meetings of the commission and the
5 attendance of members thereof for travel and subsistence shall
6 be paid from the general fund of the state as state officers are
7 paid, upon claims approved by the chairman.

8 K. After public hearings the supreme court shall adopt
9 rules of procedure for the commission on trial court
10 appointments.

11 ~~L. The members of the commission who were appointed~~
12 ~~pursuant to section 36 of this article prior to the effective~~
13 ~~date of this section may continue to serve until the expiration~~
14 ~~of their normal terms. All subsequent appointments shall be~~
15 ~~made as prescribed by this section.~~

16 2. The Secretary of State shall submit this proposition to the voters
17 at the next general election as provided by article XXI, Constitution of
18 Arizona.